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In the Supreme Court of the United States

OCTOBER TERM, [redacted] 1969

No. [redacted] 56

CHARLES EDMUNDSON and ROY HAMILTON,
Petitioners,

v.

THE STATE OF TENNESSEE, *ex rel.*,
JUDGE W. PRESTON BATTLE,
Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF TENNESSEE.

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v.

THE STATE OF TENNESSEE, *ex rel.*,
JUDGE W. PRESTON BATTLE,
Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF TENNESSEE.

To the Honorable, the Chief Justice and the Associate Justices of the Supreme Court of the United States:

The Petitioners, Charles Edmundson and Roy Hamilton, defendants below, respectfully pray that a writ of certiorari issue to review the judgment of the Supreme Court of the State of Tennessee which was entered against them on January 20, 1969, in the case of *State of Tennessee v. James Earl Ray, Alias Eric Starvo Galt, Alias John Willard, Alias Harvey Lohmeyer.* A copy of the order of the Tennessee Supreme Court is printed in the Appendix hereto.

OPINIONS BELOW.

The opinion of the Criminal Court of Shelby County, Tennessee is unreported and is printed in the Appendix hereto, *infra,* pp. 4a-13a. The order of the Supreme Court of the State of Tennessee, which was entered on Novem-

ber 8, 1968, is unreported and is printed in the Appendix hereto, *infra*, pp. 3a-4a. The order of the Court of Criminal Appeals of the State of Tennessee is unreported and is printed in the Appendix hereto, *infra*, pp. 2a-3a. The order of the Supreme Court of the State of Tennessee, which was entered on January 20, 1969, is unreported and is printed in the Appendix hereto, *infra*, p. 2a

JURISDICTION.

The judgment of the Supreme Court of the State of Tennessee, denying the petition for writs of certiorari and supersedeas, was entered on January 20, 1969.

The jurisdiction of this Court is invoked under 28 U.S.C. § 1257(3).

QUESTIONS PRESENTED.

1. Can a State trial court, consistent with the First and Fourteenth Amendments to the United States Constitution, in its efforts to assure a fair trial, use its injunctive and contempt powers against members of the press so as to prohibit the publication of news?

2. Does repetition in the press of statements made in violation of a State trial court's injunction by participants in a criminal case pose such a "clear and present danger" to the State or to the administration of its courts as to nullify a newspaper reporter's rights under the First and Fourteenth Amendments to the United States Constitution?

3. Is it a denial of due process under the Fourteenth Amendment to the United States Constitution for an individual to be held in contempt of orders of injunction which neither name or specify that individual, nor name or specify any person to whom said individual is related

by way of privity, common interest, representation or control—especially where the contempt conviction penalizes the exercise of certain basic rights guaranteed to all men by the First and Fourteenth Amendments?

4. Not having covered an individual by its injunction, and thereby denying him the right to challenge the scope thereof, does a State trial court's determination that said individual is guilty of criminal contempt of its orders and the court's concomitant refusal to immediately impose sentence therefor deny such person his right to a speedy trial, as guaranteed by the Sixth and Fourteenth Amendments to the United States Constitution?

CONSTITUTIONAL PROVISIONS INVOLVED.

The Constitutional provisions involved are the First, Sixth, and Fourteenth Amendments to the United States Constitution. These are printed in the Appendix, *infra*, p. 1a.

STATEMENT OF THE CASE.

The Petitioners are members of the press. Charles Edmundson is a reporter for *The Commercial Appeal*, and Roy Hamilton is a reporter for the *Memphis Press-Scimitar*. Both newspapers are published in Memphis, Tennessee. The occasion for the filing of this petition grows out of the publication of certain newspaper articles written by these reporters of and concerning James Earl Ray, for which actions the Petitioners were, on September 30, 1968, decreed by The Honorable W. Preston Battle, judge of the Criminal Court of Shelby County, Tennessee, to be guilty of criminal contempt.

Awaiting trial on several charges, one of which is murder in the first degree, James Earl Ray, the accused, has been held prisoner in the Shelby County, Tennessee

Jail for some months. Trial was originally set for November 12, 1968, but has been reset for April 7, 1969.

Following Ray's incarceration, Judge Battle, the judge before whom Ray is to be tried, on July 18, 23, 29 and 30, 1968, entered several orders of injunction directed to the lawyers and other individuals participating in the case and to courthouse personnel, enjoining them from taking part in press interviews or press conferences or making extrajudicial statements regarding certain specified topics relating to the accused or to the trial, and enjoining them from making "any and all other statements which may be prejudicial to a fair trial by an impartial jury." Certain members of the Tennessee Bar were appointed by the judge to serve as *amici curiae* for the purpose of enforcing the orders of injunction. The pertinent parts of these orders read:

> "All lawyers participating in this case, their assistants, associates, staff members, investigators and employees under their supervision and control, County Medical Examiner, Jury Commissioners, Criminal Court Clerk, County Sheriff, Police Officials and other law enforcement officers, employees of this Court and all other persons employed in the "Criminal Courts Buildings", their associates, deputies, assistants, staff members and personnel under their supervision and control, are forbidden to take part in interviews or press conferences for publicity and are enjoined from making extrajudicial statements about this case which involve: (1) the personal belief of the Declarant as to the guilt or innocence of the accused; (2) the plans of the Declarant relating to the preparation or conduct of the trial, the theory, techniques and strategy of the Declarant in the preparation and trial of the case; (3) the jurors or potential jurors who may serve; (4) the comments of the Declarant about the merits of the case and about any evidence which may be presented; (5) the credibility of or informa-

> tion concerning any known or intended witnesses or the treatment, acts and attitude of the defendant, and are further enjoined from making any and all other statements which may be prejudicial to a fair trial by an impartial jury in this case, whether specified herein or not." (All of the court's orders of injunction are printed in the Appendix, *infra*, pp. 16a-23a.)

Neither the press nor the Petitioners herein were enjoined, either specifically, by class or by relationship to named or specified parties, in any of the orders of the court.

Petitioners, Edmundson and Hamilton, wrote articles published in their respective papers on September 12, 1968. Edmundson quoted Renfro T. Hays, a private detective employed by Ray's counsel, Arthur B. Hanes, Sr., as comparing some of the conditions in Ray's cell with "devices used by Communist police agents to destroy the health and balance of their victims"; and as speaking of "bright lights kept shining night and day, of television cameras constantly monitoring the prisoner and of and [*sic*] uninterrupted lack of privacy." He also quoted Hays as saying, "I don't for a moment think Sherriff Bill Morris is trying to drive this guy out of his mind. But it's the effect of this type of surveillance that counts." (The text of this article is printed in the Appendix, *infra*, pp. 23a-24a.)

Hamilton in his article stated that it had been earlier reported that the Senior Hanes had "intimated" in a Birmingham interview that "Ray might not be able to stand trial in November because his health was being jeopardized by intensive security measures in his Shelby County jail cell." The article also stated that "In the earlier report, Hanes Sr. was quoted as saying that Ray has undergone 'enough to bug anybody' during his confinement. He said Ray has had two guards 'breathing down his neck 24 hours a day' and sometimes has to cover

his eyes against the bright lights 'shining on him night and day' in order to sleep." The article further reported that "Hanes charged that the security setup surrounding Ray constitutes 'cruel and inhuman treatment.' " (The text of this article is printed in the Appendix, *infra,* pp. 25a-26a.)

A number of the printed statements contained in these two articles closely parallel statements made earlier in open court by Arthur B. Hanes, Sr., upon the presentation of an oral motion. (These statements are printed in the Appendix, *infra,* p. 27a.)

Upon petition of the *amici curiae,* on September 17, 1968, *scire facias* was issued and served upon Hanes, Hays, Edmundson and Hamilton, requiring them to appear and show cause why they should not be held in contempt for violation of the orders of injunction. Ten days thereafter, on September 27, 1968, the Petitioners appeared before the court pursuant to the terms of the writ.

At the conclusion of all of the evidence introduced at the hearing, motion was made on behalf of Edmundson and Hamilton to quash the *scire facias* on the ground that the court's power to punish for contempt is limited by the First and Fourteenth Amendments to the United States Constitution, and that punishment on these facts would be in violation of their rights of free speech and free press as citizens and as members of the press. (Record, vol. 2, at 120, and vol. 3, at 270.) On September 30, 1968, the court overruled this motion and adjudged all four respondents to be in contempt. However, the court refused to impose sentence at that time, stating that "It might well be that future action and conduct of all or some of these respondents might be considered as a mitigation or even as a purgation of the offense." (A copy of the court's opinion is printed in the Appendix, *infra,* pp. 4a-13a.)

Immediately thereupon, Edmundson and Hamilton moved the court to reconsider and discharge them, or, in the alternative, to pass sentence upon them in order that they might have a clear right to take an appeal. (Record, vol. 3, at 299.) This motion was overruled. (A copy of the court's opinion is printed in the Appendix, *infra*, pp. 13a-14a.)

Thereafter, the Petitioners filed a motion for a new trial in which, among other specifications, they assigned error on the grounds that the judgment of the court was in violation of the rights of free speech and free press guaranteed to them by the First and Fourteenth Amendments to the United States Constitution, and, additionally, that it deprived them of their liberty and property without due process of law in violation of their rights under the Fourteenth Amendment. (Record, vol. 3, at 340 & 343.) This motion was overruled by the court on the ground that it was premature since no sentence had yet been imposed. (A copy of the court's order is printed in the Appendix, *infra*, pp. 15a-16a.)

Thereafter, Edmundson and Hamilton, for the purpose of obtaining a reinstatement of their basic Constitutional rights which the trial court's decision was designed to suspend during the Ray trial, on November 4, 1968, petitioned the Supreme Court of the State of Tennessee for writs of certiorari and supersedeas to the Criminal Court of Shelby County, Tennessee. On November 8, 1968, the supreme court declined jurisidiction, stating that petitions of this kind should be made to the Tennessee Court of Criminal Appeals. (A copy of the court's order is printed in the Appendix, *infra*, pp. 3a-4a.)

Seasonably, the petition, appropriately modified, was, on November 15, 1968, presented to the Court of Criminal Appeals of the State of Tennessee. (Record, vol. 1, at 33.)

The writs prayed for in the petition were denied by this court on the ground that the trial court's order was merely interlocutory and not final since punishment had not yet been imposed. The court concluded that the judgment against the Petitioners was not such a decision as should be reviewed by certiorari. The order of the Tennessee Court of Criminal Appeals was entered on November 18, 1968. (A copy of the court's order is printed in the Appendix, *infra*, pp. 2a-3a.)

Seasonably, on December 6, 1968, Edmundson and Hamilton petitioned the Supreme Court of the State of Tennessee for writs of certiorari and supersedeas to the Tennessee Court of Criminal Appeals. [Section 16-452 of the Tennessee Code provides that the Supreme Court of Tennessee can review decisions of the Court of Criminal Appeals only by certiorari. 4 TENNESSEE CODE ANN. § 16-452 (Supp. 1968).] Reiterating their charges that they had been denied their rights of free speech and free press in violation of the First and Fourteenth Amendments to the United States Constitution, and that they had been denied due process in violation of the Fourteenth Amendment, the Petitioners requested that the judgment of the Court of Criminal Appeals be reversed and that the court review and reverse the judgment of the Criminal Court of Shelby County, Tennessee. (Record, vol. 1, at 1.) This petition was denied on January 20, 1969, the court giving no reasons for its decision. (A copy of the court's order is printed in the Appendix, *infra*, p. 2a.)

Having exhausted all other remedies, and believing that they have been denied certain basic Constitutional rights, Charles Edmundson and Roy Hamilton now respectfully petition this Honorable Court for a writ of certiorari to the Supreme Court of the State of Tennessee.

REASONS FOR GRANTING THE WRIT.

1. This Court has never permitted the press to be criminally prosecuted for merely publishing an accurate account of newsworthy information which has been voluntarily submitted to it. However, if the Petitioners' convictions are allowed to stand, such a pernicious precedent will be established; and the secure foundation of the First Amendment will be left trembling.

In the leading cases of *Bridges v. California,* 314 U.S. 252 (1941); *Pennekamp v. Florida,* 328 U.S. 331 (1946); and *Craig v. Harney,* 331 U.S. 367 (1947), this Court unequivocally refused to allow the States to silence the press by means of contempt convictions. Although opinions of this Court have suggested that, under extraordinary circumstances, courts might be justified in imposing sanctions of censorship against the news media when the safety of the State is jeopardized or where there is an imminent threat that the orderly administration of the courts will be destroyed, it is noteworthy that this contingency has never occurred.

Even in the recent case of *Sheppard v. Maxwell,* 384 U.S. 333 (1966), where the proceedings were imbued with a "carnival atmosphere," this Court gave no indication that the trial judge would have been justified in using his injunctive and contempt powers to suppress the publication of news. In fact, it was expressly stated that the massive pretrial publicity did not, by itself, deny the defendant his right to due process. *Id.* at 354. Instead, the defendant's conviction in *Sheppard* was reversed for the sole reason that the trial court had not adequately utilized its inherent authority to regulate its internal proceedings and those persons subject to its internal jurisdiction. *Id.* at 358.

By expanding the purview of its injunctive orders through judicial construction so as to find the Petitioners guilty of contempt, the trial court in the instant case has turned sharply off the course charted by this Court in *Sheppard*. It has attempted to transfer from itself to members of the press the weighty burden of assuring that a defendant will receive a fair trial. Such an endeavor contravenes the fundamental concept underlying the Bill of Rights—that they are intended to restrict governmental, not individual, action. It would seem axiomatic that, if such a displacement can ever be justified, it must be limited to those situations where a trial judge has exhausted all other means at his disposal to effectively protect the accused.

Therefore, it is respectfully submitted that, under the circumstances of the instant case, the trial judge's action in placing a direct responsibility for the preservation of fairness upon members of the press, by attempting to regulate and control the publication of news, was unwarranted and illegal, and, consequently, an unlawful abridgment of the Petitioners' rights of free speech and free press.

2. Although this Court has alluded to the possibility that a State court might be justified in invoking its contempt powers against a recalcitrant press where the exercise of an unabridged right to free speech threatens the safety of the State or the destruction of the orderly administration of its courts, *Craig v. Harney*, 331 U.S. at 373; *Pennekamp v. Florida*, 328 U.S. at 349-50; *Bridges v. California*, 314 U.S. at 262-63, the "clear and present danger" standard, as demonstrated in *Sheppard*, has never been sanctioned by this Court for application in the narrow context of a possible miscarriage of justice resulting from the publication of news or editorial comment con-

cerning a single criminal case. How much more sweeping and unsanctioned then is the application of this standard by a State trial court when the exercise of the rights to free speech and free press consist only of reporting statements made by participants in the case who are directly subject to the trial judge's control?

As this Court recently recognized in the *Sheppard* case:

> "A responsible press has always been regarded as the handmaiden of effective judicial administration, especially in the criminal field. Its function in this regard is documented by an impressive record of service over several centuries. The press does not simply publish information about trials but guards against the miscarriage of justice by subjecting the police, prosecutors, and judicial processes to extensive public scrutiny and criticism. *This Court has, therefore, been unwilling to place any direct limitations on the freedom traditionally exercised by the news media* * * *." 384 U.S. at 350 (Emphasis added.)

Furthermore, the startling impropriety of the trial court's action is spotlighted by the fact that the Petitioners did nothing more than publicize statements regarding the treatment which was being accorded James Earl Ray. Our society demands that any possible mistreatment of a prisoner be immediately reported to the public. Moreover, it is inconceivable that publicity regarding the possible mistreatment of an individual while in jail could in any way prejudice his right to a fair trial.

Therefore, it is respectfully submitted that the erroneous application of the "clear and present danger" standard by the trial court constituted an unlawful abridgment of the Petitioners' rights of free speech and free press.

3. It would seem to be a basic proposition of law that an individual cannot be prosecuted for violating an order of injunction which fails to indicate that it is applicable to him. *See Regal Knitwear Co. v. NLRB,* 324 U.S. 9 (1945); *Lanzetta v. New Jersey,* 306 U.S. 451 (1939). However, that is precisely what occurred in the instant case for Edmundson and Hamilton were neither named or specified, nor linked by relationship to parties named or specified, in the orders of injunction.

On their face, the trial court's orders purported to restrict conduct of the members of its official family. There was nothing to indicate that they were designed to apply to members of the press. In fact, in its order of July 30, 1968, the trial judge indicated the limited scope of his decree by stating:

> "The Court recognizes the wide and pervasive publicity which has been and will be an inevitable incident of this trial. The Court further recognizes that there are many individuals who are beyond the jurisdiction of this Court, but who may be interested in the outcome of this trial, and whose statements may have been violative of this Order had the Court jurisdiction over such parties. As to such persons, the Court *urges self-imposed compliance* with this Order in the interests of a fair trial to the defendant and to the State of Tennessee.
>
> "In accordance therewith the Court orders a certified copy of this Order to be sent by the Clerk of this Court to all persons named herein or subject hereto, *and* all newspapers of general circulation, radio and television stations within the jurisdiction of this Court." (Emphasis added). (The entire order is printed in the Appendix, *infra,* pp. 20a-23a.)

However, by finding the Petitioners to be in contempt, the court has now construed its own orders so that they

apparently have no limitation. Such an unforeseeable and retroactive judicial expansion of the precise language of the orders is at war with the fundamental concept of due process that acts subject to criminal prosecution must be defined with great specificity. *Bouie v. City of Columbia*, 378 U.S. 347, 352 (1964).

The Petitioners' convictions, if allowed to stand, compel the conclusion that anyone in the country at large who reads and then publishes, either by newspaper article or by word of mouth, any prohibited statement of any party specified in the orders of injunction thereby violates said orders. Such a result is intolerable and violative of the basic tenets of our form of government.

Moreover, the iniquity of the Petitioners' convictions is further enhanced by the fact that Edmundson and Hamilton are daily being deprived of their inherent property rights to pursue a vocation and to earn a living. By refusing to impose sentence upon them, the trial court has kept the club of threatened punishment and the carrot of possible forgiveness over their heads. Responsible news reporters cannot conceivably function effectively when harassed by such instruments of censorship.

Therefore, it is respectfully submitted that the Petitioners have been denied their basic rights of due process under the Fourteenth Amendment to the United States Constitution.

4. This Court has recently recognized that the Sixth Amendment's guarantee of a speedy trial precludes the States from indefinitely prolonging the oppression, anxiety and concern which accompanies public accusations. *Klopfer v. North Carolina*, 386 U.S. 213, 222 (1967). By refusing to impose sentence upon the Petitioners in the instant case, the trial judge has flagrantly violated this mandate.

While this Court has stated that a mere delay in sentencing does not always deprive an individual of his right to a speedy trial, nevertheless, it has been observed that a Constitutional deprivation will occur if such delay is purposeful or oppressive. *See Pollard v. United States,* 352 U.S. 354, 361 (1957); *Welsh v. United States,* 348 F.2d 885 (6th Cir. 1965); *United States v. Grabina,* 309 F.2d 783, 786 (2d Cir. 1962), *cert. denied,* 374 U.S. 836 (1963). Under the circumstances of the present case, it would seem self-evident that the delay was both purposeful and oppressive.

The trial court has attempted to erect insurmountable barriers for the Petitioners. By failing to give any indication that its injunctive orders were applicable to members of the press, the court denied Edmundson and Hamilton the opportunity to directly challenge the validity of these orders. Then, by refusing to impose sentence upon them, it prevented the Petitioners from having their convictions reviewed by means of simple appeal. Consequently, Edmundson and Hamilton are now in the insufferable position of being forced to withhold information from the public out of fear that they might transgress the amorphous boundaries of a judicial order, the mettle of which they have been unable to test in any appellate court. The trial judge has, thus, devised a unique method of censorship which, unless this Court intervenes, will escape review—at least throughout the period when the censorship is desired, *i.e.,* until Ray's trial has ended.

This is a matter of broad nationwide concern to all news media and their reporters. If this proves an effective means by which a trial judge can impose an illegal censorship without appellate review, it must be anticipated that other courts will employ the same stratagem.

Therefore, it is respectfully submitted that the trial judge's failure to impose sentence in the instant case was purposeful, arbitrary and oppressive, and has denied the Petitioners their right to a speedy trial.

CONCLUSION.

For the foregoing reasons, it is respectfully submitted that this Petition for a Writ of Certiorari should be granted.

ARMISTEAD F. CLAY,
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Of Counsel:
EZRA K. BRYAN,
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W. JAMES OLLINGER.

February, 1969.

APPENDIX.

CONSTITUTIONAL PROVISIONS.

The First Amendment to the United States Constitution: "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances."

The Sixth Amendment to the United States Constitution: "In all criminal prosecutions the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining Witnesses in his favor, and to have the Assistance of Counsel for his defence."

Section One of the Fourteenth Amendment to the United State Constitution: "All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

ORDER OF THE TENNESSEE SUPREME COURT DENYING THE PETITION FOR WRITS OF CERTIORARI AND SUPERSEDEAS TO THE TENNESSEE COURT OF CRIMINAL APPEALS.

(Entered January 20, 1969.)

Petition for Certiorari Denied. No Written Opinion.

[This order appears in volume one of the Record at page 84.]

ORDER OF THE TENNESSEE COURT OF CRIMINAL APPEALS.

(Entered November 18, 1968.)

The petitioners, Charles Edmundson and Roy Hamilton, have presented to this member of the Court a petition for the writs of certiorari and supersedeas, seeking to review and reverse the order of the trial judge in holding them in contempt of court for violating an order in regard to pretrial publicity.

After a full hearing on September 27 and 30, 1968, the trial judge found these petitioners, as well as an attorney and an investigator, in contempt of court. He was undecided at that time as to what action he should take about punishment and reserved it for further consideration. In his remarks at the hearing, he indicated that the punishment might be mitigated or even not be imposed. The petitioners contend that, in finding them in contempt, the trial judge made an erroneous decision, in violation of their rights of free speech and press, and that he exceeded his jurisdiction.

The writs of certiorari and supersedeas are denied by me for the following reasons:

The trial judge had jurisdiction in this case. His order is interlocutory; the writ of certiorari is not employed to inquire into the correctness of an interlocutory order which is in the court's jurisdiction but is merely an erroneous exercise of that jurisdiction. *McGee v. State*, 207 Tenn. 431, 340 S.W.2d 904.

The judgment in this case is not such an order as should be reviewed by certiorari. An adjudication of contempt is not final until punishment is imposed. Here no punishment has been imposed. Conceivably, punishment may never be imposed. There are no exceptional circumstances which call for the issuance of the writ in the interest of justice.

The petition and the record of the proceeding in the Criminal Court of Shelby County are returned to the attorneys for petitioners.

[This order appears in volume one of the Record at page 82.]

ORDER OF THE TENNESSEE SUPREME COURT DENYING THE PETITION FOR WRITS OF CERTIORARI AND SUPERSEDEAS TO THE CRIMINAL COURT OF SHELBY COUNTY, TENNESSEE.

(Entered November 8, 1968.)

The petition of Charles Edmundson and Roy Hamilton for writs of certiorari and supersedeas having been inadvertently filed herein are hereby stricken from the docket of this Court and the file is ordered returned to counsel for the petitioners.

Petitions of this kind should be made to the Court of Criminal Appeals since said court has jurisdiction of all criminal cases on appeal. See T.C.A. 16-448. Cases involving contempt proceedings are criminal in nature and

any appeal is to the appellate court having criminal jurisdiction. This Court only has jurisdiction when a case is certioraried from the Court of Criminal Appeals or where the sole and single question for determination involves the constitutionality of a statute or ordinance. See *Metcalf v. Eastman,* 190 Tenn. 206, 228 S.W.2d 490, and T.C.A. 16-448.

The costs are taxed to the petitioners.

Per Curiam.

[This order appears in volume one of the Record at page 78.]

OPINION OF THE CRIMINAL COURT OF SHELBY COUNTY, TENNESSEE.

(Decided September 30, 1968.)

I have made a few notes here, but, of course, it didn't include what has been said this morning.

Very briefly, as to Mr. Clay's remarks about the Maryland case, I think that the Baltimore Radio case is distinguishable from the case at bar in that the order there was much too broad. As Mr. Clay observed, the order there was much like the catch-all at the end of the amici curiae order, which says that "and all other statements which may be prejudicial to a fair trial by an impartial jury in this case, whether specified herein or not".

That was just the catch-all phrase at the bottom or at the end of the five specifics that were set out, which I will come to in my notes, but the one complained of, of course, is the "treatment, acts and attitude of the defendant", which I think is very specific, and I will discuss it in my notes here.

Now, Mr. Hanes, Jr. makes a point of the difficulty of him and his father in dealing with the news media. I would agree with him. This whole climate is rather difficult, but I would recommend to him what the Court does. The Court has been approached by a few people with questions about the Ray case, and all I have to tell them is; "I consider myself bound by my own Order". That is all it is.

We have got to try this case in the Courtroom and not by extrajudicial statements, and as I will come to in my notes, there is a great distinction between what happens in Court, where you have got an adversary proceeding and your opponent, if any charges or claims are made, can contest them, then they can be borne out in Court by witnesses on the stand and either the Judge or Jury decide the point.

The whole situation in the Courtroom is under the control of the Judge, and it is a lot different from saying the same thing in a courtroom and going out extrajudicially and saying to a reporter or TV man or to a radio man, "Those things that I said in Court are true". They are not able to be controverted. They are given wide dissemination, and there is just a great distinction.

Now Mr. Livingston makes much about the absence of a man that is not under subpoena and who Mr. Hays says was present at an interview that he had with Mr. Edmundson, which was before the article was printed. Mr. Edmundson says it was afterwards and had absolutely nothing to do with it. It is unfortunate that things turned out the way they did, but I don't believe we can do anything about it if the man is not under a subpoena.

Now let's get down to the issues. Trial Courts, such as this one, have not sought the responsibility of dealing with pretrial publicity in criminal trials of national significance. That responsibility has been placed on us

by the Supreme Court of the United States, and it is held in Sheppard vs. Maxwell that if the Trial Court fails to perform its duties in this regard, the case will be reversed.

I personally would hate to live anywhere where there is no freedom of the press. Freedom of speech and freedom of the press are set out in the First Amendment. Those rights are set out in the First Amendment of the Constitution of the United States. A fair trial is guaranteed to the defendant in the Sixth Amendment of the United States Constitution. Both of these great rights are basic and are foundation stones to our democracy, there is no doubt about that, and we are here concerned with an area where these great rights are in conflict. Really, it is a frontier of the law. There are but few guidelines available. But neither the novelty nor difficulty of the decision in this matter can excuse our avoidance of a decision. An avoidance of a decision is a luxury that this Court can't afford.

Both the United States Constitution and the Tennessee Constitution guarantee to the accused a speedy public trial by an impartial jury. Nothing is said about a fair trial for the State, but that is necessarily the other side of the coin, for a trial by a Jury biased for the defendant would not be a fair trial, and the Jury would not be impartial.

An impartial Jury has been held in this State to be one that takes the box and is indifferent as between the parties.

The first Order of this Court on publicity and the Amendment thereto was directed, among others, to "lawyers participating in this case", as paragraph 7, and their "investigators", paragraph 7. They were ordered not "to take part in interviews for publicity and from making extrajudicial statements about this case as are prejudicial to a fair trial by an impartial jury".

That was the first Order and Amendment. The first Order was on July 18, 1968; the Amendment was July 23, 1968.

The second Order entered July 30, 1968 provided that "All lawyers participating in this case and their investigators * * * are forbidden to take part in interviews or press conferences for publicity and are enjoined from making extrajudicial statements about this case which involves * * * (5) the treatment, acts and attitude of the defendant".

Webster's Third New International Dictionary defines the word "extrajudicial" as "1*a*, lying outside or beyond the Court proceedings, forming no valid part of the case before a Court", and "1*b*, not made before a Judge or the Court in due course of legal proceedings".

It is obvious that neither the press nor the individual reporters are specifically named in any of the above Orders.

The Court finds that each of the four defendants has had due notice of these orders. Each of the orders was given wide dissemination by all news media throughout the area. Hanes, Senior, a lawyer for the defendant, was a party specifically referred to in both the Orders, as was his investigator. The legal effect of the Order was brought up in open Court on September 6, 1968 by Mr. Hanes, and Mr. Hays was in the Courtroom. Both newspaper reporters received copies of the Order of July 30, 1968, as did their respective newspapers. Both papers gave prominent publicity to the Order of July 18, 1968, and the Amendment of July 23, 1968.

The offending article on September 12, 1968, Thursday, an article under the byline of defendant, Charles Edmundson, reporter for the Commercial Appeal, appeared in the Commercial Appeal quoting the defendant,

Renfro T. Hays, a private detective employed by Mr. Hanes, Senior, as saying: Last night, September 11, 1968, that the health of James Earl Ray is so threatened by security measures in force at the Shelby County Jail that he may not be able to stand trial as scheduled November 12th, an indirect statement. Hays compares some of the conditions in Ray's cell with "devices used by Communist police agents to destroy the health and balance of their victims". Hays spoke of bright lights kept shining night and day, of television cameras constantly monitoring the prisoner and of uninterrupted lack of privacy. This is an indirect statement. Hays said, "I don't think Sheriff Bill Morris is trying to drive this guy out of his mind, but it is the effect of this type of surveillance that counts."

On Friday Mr. Hays took the witness stand and under oath denied making each and every statement relating to Ray's treatment in jail.

After the case had been argued, the Court allowed Mr. Edmundson to take the stand, and under oath he testified that Mr. Hays made each and every statement in the article attributed to him in both direct and indirect quotes. This morning, in rebuttal, Mr. Hays has denied again making the significant quotes as set out in the Edmundson article.

The testimony is in direct conflict.

It is the duty of the Court to determine the credibility of the witnesses and determine the truth of the matter.

The Court believes Mr. Edmundson has told the truth. It is clear that the above statements are the result of "an interview for publicity", and are the account of "extra-judicial statements", "prejudicial to a fair trial by impartial jury in the case", by an "investigator of a lawyer participating in the case".

On Thursday, September 12, 1968, the evening paper, the Memphis Press-Scimitar, published an article under the byline of Roy Hamilton, Press-Scimitar staff writer, stating among other things that "Hanes, Senior had intimated in a Birmingham interview that Ray might not be able to stand trial in November because his health was being jeopardized by intensive security measures in the Shelby County jail cell." This was a direct quotation in the third paragraph.

In the seventh paragraph, "In the earlier report, Hanes, Senior, was quoted as saying that Ray had undergone enough to bug anybody" during his confinement. He said, "Ray has had two guards breathing down his neck 24 hours a day and sometimes has to cover his eyes against bright lights shining on him night and day in order to sleep".

And in the eighth paragraph, Hanes charges that the security set-up surrounding Ray constitutes "cruel and inhuman treatment".

Hamilton did not testify, but Mr. Hanes, Senior did. It may be remarked that anything said in open Court by a lawyer in a pending case, if relevant and in proper language, is absolutely privileged, and the press has an absolute right to report it. Mr. Hanes, Senior took the stand and on cross-examination admitted that he might have stated in Birmingham to some Birmingham reporters, among others, that some of the statements about Ray's treatment in his cell attributed to Hanes in Hamilton's story of September 12th were true, but all such statements had already been made orally by him, Hanes, in open Court.

There is surely an obvious difference between making charges and claims in Court, where there is an adversary proceeding and where the opposing side can challenge the

truth of the charges and claims, and sworn proof can be put on to controvert the same under the direction of a Judge, and the giving of unsworn statements outside Court and extrajudicial statements that the identical charges and claims are true, in fact, and for the same to be disseminated throughout the community to possible jurors who will ultimately try this case.

If the statements as to the treatment, acts and attitude of the defendant are prejudicial to a fair trial by an impartial jury in the case and are made extrajudicially, that is, outside the Court, then they are in violation of the Orders of the Court, whether made before or after the same identical statements are legally, because privileged, made in open Court or in a pleading filed in Court.

As to the two reporters and the defense of the First Amendment, neither the press, communications media nor these two reporters are enjoined, either specifically or by class in the Orders of the Court.

Prior restriction of free speech and freedom of the press has been held to be unconstitutional by the Supreme Court. It cannot be doubted, however, that the Court has jurisdiction over lawyers participating in the case and their investigators. It is spelled out in the Sheppard vs. Maxwell case that the Court not only has the power to regulate the extrajudicial statements, but that it would be reversible error for the Court not to do so if prejudicial publicity results from such failure.

These two newspaper reporter defendants avoid responsibility of these contempt charges by claiming First Amendment immunity. It is very generally held that all persons who aid and abet those against whom an injunction has been rendered in disobeying it, are guilty of contempt of Court if they have actual knowledge of the injunction, although not themselves parties to the suit or

named in the Order granting the injunction. 43 Corpus Juris Secundum, 263(c), page 1012. And see Boils vs. Boils, 41 Tennessee 284. This is an old case, 1860, but it is still the law in Tennessee.

In this case the Tennessee Supreme Court specifically held that an individual not a party to the suit and not named in the injunction, either specifically or as a member of a group, nonetheless is bound by an injunction even though his acts of violation of an injunction occurred before the injunction was actually issued, if said stranger had knowledge of the fiat for the injunction.

Mr. Clay, Mr. Burch and Mr. Hanes, Junior all mentioned the report of the "Committee on the Operation of the Jury System on Free Press, Fair Trial Issue", addressed to the Chief Justices of the United States and Members of the Judicial Conference of the United States. This Committee was led by Chairman Irving I. Kaufman, and the report is dated September, 1968.

The Court has read this report with great interest, and on Page 16 of the said report it is stated: "The Supreme Court of the United States has indicated in Sheppard vs. Maxwell, that the Courts have both the power and responsibility to insure that a fair trial by an impartial jury is afforded every criminal defendant. However, the power of the Courts to control the news media and other sources of possible prejudice to the defendant is, under the Constitution, not without limits", citing Woods vs. Georgia, 370 U. S. 375, 1962.

The Court read Woods vs. Georgia, the facts of which are not here apposite. In that case, however, the criteria of the great landmark cases on free speech, free press curtailment are reviewed. Bridges vs. California, 314 U.S. 252; Pennecamp vs. Florida, 328 U.S. 331 and Craig vs. Harney, 331 U.S. 367, laid down the guidelines that the exercise of

judicial power over out of Court publications was to be governed by the clear and present danger standard; that "a working principle that the substantive evil must be extremely serious and the degree of imminence extremely high before utterance can be punished". Bridges, P. 263; and "The fires which (the expression) kindles must constitute an imminent, not merely a likely, threat, to the administration of justice. The danger must not be remote or even probable. It must immediately imperil." Harney, P. 376.

This Court is of the considered opinion that the extrajudicial statements herein complained of are extremely prejudicial and constitute a clear and present danger to the selection of an impartial jury and the holding of a fair trial for both defendant and the State; that such prejudicial, extrajudicial statements are extremely serious, and the degree of imminence of peril is extremely high; and that the prejudice that such statements kindle constitutes an imminent, not merely likely threat to the administration of justice.

The danger of prejudicing prospective jurors is not remote or even probable, but is immediately imperiling. The Court is persuaded that all the criteria above set out are met by the particular facts and circumstances of this case.

The Court takes notes of these significant words of the Supreme Court of the United States in Sheppard vs. Maxwell, 384 U.S. 333 at Page 362, and I quote:

"Had the Judges and the other officers of the Court and the police placed the interest of justice first, the news media would have soon learned to be content with the task of reporting the case as it unfolded in the courtroom, not pieced together from extrajudicial statements".

This Court must place the interests of justice first.

Justice demands a fair trial by an impartial jury for both the defendant, James Earl Ray, and the State of Tennessee.

It is my present opinion that the respondents, each and all, have failed to show good cause why they should not be held in contempt for the violating the Orders of this Court, of which they had notice.

I am not yet ready to decide what final disposition should be made of the matter. It might well be that future action and conduct of all or some of these respondents might be considered as a mitigation or even as a purgation of the offense.

Consequently, I reserve final disposition of this matter for a future day.

Is there anything else at this time in this matter?

[This opinion appears in volume three of the Record at page 326 and is paraphrased in volume three of the Record at page 282.]

OPINION OF THE CRIMINAL COURT OF SHELBY COUNTY, TENNESSEE ON PETITIONERS' MOTION FOR REHEARING OR, ALTERNATIVELY, THAT SENTENCE BE IMPOSED.

(Decided September 30, 1968.)

When I stated that I am not yet ready to decide what final disposition should be made of this matter, and I am still of that opinion, sir.

I can deeply sympathize with your desire to get this in some Appellate Court now. I am just not ready to decide it, and it is a knotty question that I didn't seek, but I am very sensitive to what I think my duties are, and I have stated here what I think the law is, and I have stated here that, like it or not, it is my duty to follow justice in this matter and that is what I have done. And

while I would like to place the press in a situation they are seeking, to place a fine or some punishment on these defendants, why I am just not ready to do that yet.

So the petition for motion for rehearing or to sentence the defendants will be overruled at this time.

[This opinion appears in volume three of the Record at page 310.]

ORDER OF THE CRIMINAL COURT OF SHELBY COUNTY, TENNESSEE ON "SCIRE FACIAS."

(Entered October 11, 1968.)

This cause came on to be heard on a verified petition for citation for contempt of Arthur J. Hanes, Sr., Renfro T. Hays, Roy Hamilton and Charles Edmundson, heretofore filed by the Court-appointed amici curiae; personal service of said petition upon all four named respondents; scire facias issued by this Court ordering said respondents to show cause why they should not be held in contempt of previous orders of this Court; the sworn answer of the respondent Renfro T. Hays; the hearing in open Court on the 27th day of September, 1968, and on the 30th day of September, 1968, at which time sworn testimony was adduced by the petitioners and the respondents; the argument of counsel for all parties; the exhibits in the cause, and upon the entire record in this cause, from all of which it appears to the Court:

That the respondents, Arthur J. Hanes, Sr., Renfro T. Hays, Roy Hamilton and Charles Edmundson, each, are guilty of contempt as found by this Court in its opinion which has been filed in this cause, and which the Court incorporates by reference in this order the same as if copied herein verbatim; and

The Court being undecided at this time as to what action the Court should take by way of punishment on account of said contempts, and being desirous of giving the matter further consideration,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that this matter be, and the same is hereby, reserved by this Court for further and future orders of this Court.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the motions of the respondents Roy Hamilton and Charles Edmundson, made by and through their attorneys, the Honorable Armistead Clay and the Honorable Ezra Z. Bryan, at the conclusion of the Court's opinion, to reconsider the Court's action and, in the alternative, to fix punishment, are hereby denied.

To all of which the respondents respectfully except.

[This order appears in volume three of the Record at page 339.]

ORDER OF THE CRIMINAL COURT OF SHELBY COUNTY, TENNESSEE ON MOTION FOR NEW TRIAL.

(Entered October 22, 1968.)

This cause came on this day to be heard upon motion for new trial having been filed in the cause in behalf of Charles Edmundson and Roy Hamilton, said motion being filed on the 14th day of October, 1968; upon the amendment to the motion for new trial, said amendment being in behalf of Charles Edmundson and Roy Hamilton and filed on the 18th day of October, 1968; upon the argument of counsel representing the respondents named hereinabove; upon the statement of the Court's amici curiae and

upon the entire record in this cause, from all of which it appears to the Court:

That the motion for new trial and the amendment to the motion for new trial is inappropriate and premature at this time; that the Court, therefore, believes that the motion for new trial filed in this cause and the amendment to the motion for new trial should be stricken from the records and minutes of this Court, in toto.

IT IS, THEREFORE, ORDERED AND ADJUDGED:

That the motion for new trial filed in this cause on the 14th day of October, 1968, and the amendment to the motion for new trial filed in this cause on the 18th day of October, 1968, be and the same are hereby stricken from the records and minutes of this Court, in toto.

The respondents, Charles Edmundson and Roy Hamilton, each do hereby take exception to the Court's ruling, said exception being duly noted by the Court.

[This order appears in volume three of the Record at page 346.]

ORDERS OF THE CRIMINAL COURT OF SHELBY COUNTY, TENNESSEE REGARDING COURTROOM PUBLICITY.

Order of July 18, 1968:

ORDER ON COURTHOUSE AND COURTROOM PROCEDURES AND PUBLICITY

The Constitutions of the United States and the State of Tennessee guarantee defendants in criminal cases due process of law and the right to a fair trial by an impartial jury. It is the duty of the trial Court to see that every defendant receives all his constitutional rights.

From the world wide attention attracted to this case at bar resulting in massive and pervasive publicity in the

news media, the Court is of the opinion that the following rules are necessary to a constitutionally guaranteed orderly and fair trial by an impartial jury, and therefore orders:

The term "Criminal Courts Buildings" as used herein shall mean the Criminal Courts Building, 150 Washington, and the adjoining Shelby County Building, 157 Poplar Avenue, Memphis, Tennessee.

All entrance ways, corridors, and approaches to Court rooms, offices and other rooms in the Criminal Courts Buildings will be kept clear at all times for free access thereto by those using them in the course of their employment or those having business to transact therein.

No cameras, photographic, television, radio or sound equipment, including tape records, will be permitted in the Criminal Courts Buildings or upon the alley-ways, parking lots, yards or grounds immediately surrounding said buildings. No photographs will be taken of the Jury, nor will they be televised. No sketches will be made in the Criminal Courts Buildings.

All persons seeking admission to the Courtroom will submit voluntarily to a search of his person before being admitted.

No one will enter the Courtroom after a session has begun without permission of the Court, but must wait until the next recess. No one will leave the Courtroom except at recess or adjournment except in an emergency. At noon recess and adjournment, and at any other time the Jury is retiring from the second floor, or the prisoner is being removed to the jail, the spectators shall remain seated in the Courtroom until the Jury and prisoner have had ample time to withdraw, and said spectators have been given permission to disperse.

The bar of the Court within the rail is reserved for the defendant, counsel, members of the Bar, Court personnel and such witnesses as counsel may desire to be within the bar for consultation purposes. No one else will enter without permission of the Court.

No one except attorneys of record, their agents, Court personnel, witnesses and Jurors may handle exhibits except by order of the Court.

All lawyers participating in this case, their assistants, office associates, staff members, investigators and employees under their supervision and control are forbidden to take part in interviews for publicity and from making extra-judicial statements about this case from this date until such time as a verdict is returned in this case in open Court.

The County Medical Examiner, Jury Commissioners, Criminal Court Clerk, County Sheriff, Police Officials and other law enforcement officers, employees of this Court, all other persons employed in the "Criminal Courts Buildings", their associates, deputies, assistants, staff members and personnel under their supervision and control are forbidden to participate in interviews for publicity and from making extra-judicial statements about this case from this date and until such time as a verdict in this case is returned in open Court.

All witnesses, persons subpoenaed to Grand Jury or Court, jurors, and those persons summoned but excused from serving as jurors, are forbidden to participate in interviews for publicity and from making extra-judicial statements about this case from this date and until such time as a verdict in this case is returned in open Court.

Nothing in this order shall prohibit any witness from discussing any matter in connection with the case with

any of the attorneys representing the defendant or the State, or any representative of such attorneys.

[This order appears in volume three of the Record at page 313 and is paraphrased in volume two of the Record at page 5.]

Order of July 23, 1968:

The order heretofore entered in this cause on the eighteenth day of July, 1968, and headed "Order On Courthouse and Courtroom Procedures and Publicity" is hereby amended as follows:—

In paragraphs VII, VIII and IX of said Order, the terms "Interviews for publicity" and "extra-judicial statements" shall be limited to such interviews and statements as are prejudicial to a fair trial by an impartial jury in the case.

This is done by the Court on its own motion, this twenty-third day of July, 1968.

[This order appears in volume three of the Record at page 316 and is paraphrased in volume two of the Record at page 10.]

Order of July 29, 1968:

This cause came on this day to be heard by the Court on its own motion from all of which it appears to the Court:

That its Order on Courthouse and Courtroom Procedures and Publicity entered by the Court on July 18, 1968, as well as the Amendment to the Order, same being dated the 23rd day of July, 1968, may have been violated by one or more person or persons.

It, therefore, further appears to the Court and it is the Court's desire and opinion that it should appoint certain

attorneys as "amici curiae" for the purpose of assisting and advising with the Court with regard to the possible violation or violations of either of the orders identified herein above.

IT IS, THEREFORE, ORDERED AND ADJUDGED by the Court that Don G. Owens, Lucius E. Burch, Jr., J. Alan Hanover, Cooper Turner, Jr., Leo J. Buchignani, James D. Causey, Leo Bearman, Jr., and Lee A. Hardison, attorneys and members of the Memphis, and Shelby county Bar Association, be and they are hereby appointed "amici curiae" by this Court.

IT IS FURTHER ORDERED AND ADJUDGED that the attorneys aforesaid be and they are hereby directed to investigate assist and advise with the Court with regard to any possible violation or violations of either of the orders mentioned herein above, and otherwise assist the Court as may be expedient or necessary.

ENTERED this the 29th day of July, 1968.

[This order appears in volume three of the Record at page 317.]

Order of July 30, 1968:

In this cause, the Court having heretofore appointed a committee of eight members of the Bar to act as amicus curiae and said committee having this day filed a report that there is probable cause to believe that this Court's Order of July 18, 1968, as amended July 23, 1968, has been violated by certain individuals in certain circumstances, to-wit:

(1) Certain statements attributed to Arthur J. Hanes, Esq., to the effect that the shooting of Doctor Martin Luther King, Jr. involves a Communist conspiracy, to the effect that his client's rights were being trampled in jail,

and to the effect that himself, his family and servants are being threatened by "them", as quoted in the Memphis Press Scimitar of Saturday, July 27, 1968, and the Commercial Appeal of Sunday, July 28, 1968;

(2) Certain statements in Memphis Press Scimitar of July 27, 1968, attributed to William Morris, Sheriff of Shelby County, Tennessee, concerning the cost and expenses for the security of the prisoner and the treatment of the prisoner, and the prisoner's demeanor and attitude while in confinement;

(3) Certain statements appearing in the Memphis Press Scimitar of Saturday, July 27, 1968, attributed to Russell X. Thompson, Esq. concerning his opinion as to the guilt or innocence of the defendant; and said report further pointing out that to the extent that Ramsey Clark, Attorney General of the United States, is a "Law Enforcement Officer" or "a lawyer participating in this case" through his staff, assistants, office associates, investigators or employees under his supervision, the statements attributed to him and the United States Department of Justice as referred to in the Commercial of July 28, 1968 are in probable violation of the principles set out in Sheppard vs. Maxwell, 384 U.S. 333, 16 L.Ed.2d 600, 86 S. Ct. 1507 (1966), said statements being to the effect that there was no evidence of a conspiracy in the shooting of Doctor Martin Luther King, Jr.

The Court, in the interest of preserving the constitutional rights of all concerned and protecting the orderly preparation and progress of the trial, reserves further inquiry and disposition of each and all of the above instances until a later date.

And whereas it is the desire of the Court to avoid any possible misunderstanding of its orders heretofore

made, said orders of July 18 and July 23 respectively are herewith supplemented as follows:

All lawyers participating in this case, their assistants, associates, staff members, investigators and employees under their supervision and control, County Medical Examiner, Jury Commissioners, Criminal Court Clerk, County Sheriff, Police Officials and other law enforcement officers, employees of this Court and all other persons employed in the "Criminal Courts Buildings", their associates, deputies, assistants, staff members and personnel under their supervision and control, are forbidden to take part in interviews or press conferences for publicity and are enjoined from making extra-judicial statements about this case which involve: (1) the personal belief of the Declarant as to the guilt or innocence of the accused; (2) the plans of the Declarant relating to the preparation or conduct of the trial, the theory, techniques and strategy of the Declarant in the preparation and trial of the case; (3) the jurors or potential jurors who may serve; (4) the comments of the Declarant about the merits of the case and about any evidence which may be presented; (5) the credibility of or information concerning any known or intended witnesses or the treatment, acts and attitude of the defendant, and are further enjoined from making any and all other statements which may be prejudicial to a fair trial by an impartial jury in this case, whether specified herein or not.

All persons or entities subject to this Order who feel aggrieved by anything herein contained are hereby admonished that any such grievances or complaints should be judicially presented.

The Court recognizes the wide and pervasive publicity which has been and will be an inevitable incident of this trial. The Court further recognizes that there are

many individuals who are beyond the jurisdiction of this Court, but who may be interested in the outcome of this trial, and whose statements may have been violative of this Order had the Court jurisdiction over such parties. As to such persons, the Court urges self-imposed compliance with this Order in the interests of a fair trial to the defendant and to the State of Tennessee.

In accordance therewith the Court orders a certified copy of this Order to be sent by the Clerk of this Court to all persons named herein or subject hereto, and all newspapers of general circulation, radio and television stations within the jurisdiction of this Court.

[This order is paraphrased in volume two of the Record at page 11.]

NEWSPAPER ARTICLE BY CHARLES EDMUNDSON WHICH APPEARED IN "THE COMMERCIAL APPEAL" ON SEPTEMBER 12, 1968.

RAY SECURITY CALLED DANGER TO HIS 'SANITY'

By Charles Edmundson

The health of James Earl Ray, charged with slaying Dr. Martin Luther King Jr., is so threatened by security measures in force at the Shelby County Jail that he may not be able to stand trial as scheduled Nov. 12, a private detective employed by Ray's attorney said last night.

Renfro T. Hays, 40-year-old investigator with offices in the Commerce Title Building, compared some of the conditions in Ray's cell with "devices used by Communist police agents to destroy the health and balance of their victims."

Hays spoke of bright lights kept shining night and day, of television cameras constantly monitoring the prisoner and of and [*sic*] uninterrupted lack of privacy.

Arthur Hanes, Ray's attorney, complained of the same items to Criminal Court Judge W. Preston Battle in a preliminary hearing Friday. Mr. Hanes was instructed to put his complaint in writing. The written complaint is expected to be argued at another hearing Wednesday.

Mr. Hays said, his work in interviewing prospective witnesses has been easier since Judge Battle Friday repeated his caution that a court order restricting publicity is not to interfere with the right of witnesses to talk to attorneys for the prosecution or the defense.

Interviewed by telephone in Birmingham, Mr. Hanes said only he will have his motion asking security changes ready Wednesday. In court Friday Mr. Hanes charged the conditions "constitute cruel and unusual punishment."

Mr. Hays said he does not think the conditions criticized in Ray's cell result from intentional persecution.

"I don't for a moment think Sheriff Bill Morris is trying to drive this guy out of his mind. But it's the effect of this type of surveillance that counts."

[This article appears in Exhibit Seven to the Record. It is also set forth in volume three of the Record at page 323 and is paraphrased in volume two of the Record at page 43.]

NEWSPAPER ARTICLE BY ROY HAMILTON WHICH APPEARED IN THE "MEMPHIS PRESS-SCIMITAR" ON SEPTEMBER 12, 1968.

HANES HAS 'NO PLANS' FOR DELAY

RAY'S ATTORNEYS STILL PLANNING TRIAL NOV. 12

By Roy Hamilton

Press-Scimitar Staff Writer

The defense for James Earl Ray, accused killer of Dr. Martin Luther King, has "no plans" to seek a postponement of his trial scheduled Nov. 12 in Memphis, Arthur J. Hanes, Jr. said today.

"So far as I know we will be ready to go on the 12th," said Hanes, who is assisting his father, Arthur J. Hanes, in Ray's defense.

REPORT

It had earlier been reported that the senior Hanes had "intimated" in a Birmingham interview that Ray might not be able to stand trial in November because his health was being jeopardized by intensive security measures in his Shelby County jail cell.

Hanes Sr. was in court on another matter but his son, when asked about the report, said, "Some things are read into statements that are quite often only in the eyes of the beholder. I know of no plans to ask for a continuance."

COMPLAINT

The younger Hanes did confirm that Ray had complained about conditions in his cell and he said it was possible that a written motion may be filed next week asking for relief.

The defense lawyers are due back in Memphis Wednesday to inspect items of physical evidence accumulated by the state for use in the prosecution. The defense won access to the state's evidence in a hearing last week in Judge W. Preston Battle's court.

QUOTED

In the earlier report, Hanes Sr. was quoted as saying that Ray has undergone "enough to bug anybody" during his confinement. He said Ray has had two guards "breathing down his neck 24 hours a day" and sometimes has to cover his eyes against the bright lights "shining on him night and day" in order to sleep.

Hanes charged that the security setup surrounding Ray constitutes "cruel and inhuman treatment."

[This article appears in Exhibit Eight to the Record. It is also set forth in volume three of the Record at page 324 and is paraphrased in volume two of the Record at page 47.]

STATEMENTS MADE BY ARTHUR HANES, SR. IN OPEN COURT UPON PRESENTATION OF AN ORAL MOTION.

(Made on September 6, 1968.)

Arthur Hanes, Sr.: "This man has two guards in there to sit with him 24 hours a day, Your Honor. He has television sets on him 24 hours a day. He has bright lights, brighter than these, burning in his eyes 24 hours a day. This man cannot rest. Why he hides under a pillow or cover to sleep, Your Honor, and I think this is cruel and inhuman. And Your Honor—"

The Court: "All right. All right, Mr. Hanes, you are getting into matters of the treatment of the defendant, and I think you should do this in writing. I think this is serious enough that whatever testimony we have be under oath and you ask for whatever relief you want and this can be a regular motion brought up before the Court."

[These statements appear in Exhibit Nine to the Record. They are also set forth in volume two of the Record at page 83.]

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IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, [redacted] 1969

CHARLES EDMUNDSON and ROY HAMILTON,
Petitioners,

vs.

THE STATE OF TENNESSEE, ex rel., JUDGE W. PRESTON BATTLE,
Respondent.

No. [redacted] 56

REPLY TO PETITION FOR WRIT OF CERTIORARI.

GEORGE F. McCANLESS,
Attorney General and Reporter,
State of Tennessee,
THOMAS E. FOX,
Deputy Attorney General,
State of Tennessee,
Supreme Court Building,
Nashville, Tennessee 37219,
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ST. LOUIS LAW PRINTING CO., INC., 411-15 N. Eighth St., 63101. CEntral 1-4477.

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Miscellaneous Cited.

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IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1968.

CHARLES EDMUNDSON and ROY HAMILTON,
Petitioners,

vs.

THE STATE OF TENNESSEE, ex rel., JUDGE W. PRESTON BATTLE,
Respondent.

No. .....

REPLY TO PETITION FOR WRIT OF CERTIORARI.

MAY IT PLEASE THE COURT:

The petitioners, Charles Edmundson, a reporter for the Commercial Appeal, a Memphis, Tennessee newspaper and Roy Hamilton, a reporter for the Memphis Press-Scimitar, another Memphis, Tennessee newspaper, seek a review by means of a certiorari proceeding to this Court of a judgment of the Supreme Court of Tennessee, entered against them January 20, 1969, in the case of State of Tennessee v. James Earl Ray, alias Eric Starvo Galt, alias John Willard, alias Harvey Lohmeyer. This opinion is unpublished. It, along with the opinion and judgment of the trial court (one of the criminal courts of Tennessee sitting Shelby County) are in the appendix to the petition.

OPINIONS BELOW.

Petitioners were found in contempt of an order of the Criminal Court of Shelby County, Tennessee, designed for the purpose of prohibiting, among other things, press releases which would tend to prevent the defendant James Earl Ray from receiving a fair trial in a criminal proceeding pending against him in Shelby County, Tennessee, for the murder of Martin Luther King, Jr.

The Tennessee Court of Criminal Appeals refused to review the order of the Criminal Court upon the theory that a review was premature and the Supreme Court of Tennessee merely denied a writ of certiorari to the Court of Criminal Appeals for a review of that court's opinion and judgment. Thus, the matter for consideration by this court is, in effect, the validity of the trial court's order since the Tennessee Appellate courts refused to review it.

JURISDICTION.

Jurisdiction of this Court is invoked by authority of 28 U. S. C., § 1257 (3). Counsel for the State of Tennessee admits the jurisdiction of this court to review the opinion of the State Supreme Court.

QUESTIONS PRESENTED.

Counsel for the petitioners insists that the record in this case presents four questions for this Court to consider. These questions as restated by counsel for the State of Tennessee are as follows:

(1) Whether or not the trial court could enjoin members of the press from the publication of news and punishment for contempt and refusal to obey the injunction

especially since the members of the press were not named in the injunction.

(2) Whether or not the trial judge's refusal to adjudge punishment pursuant to a judgment of contempt violated petitioners' right to a speedy trial in this case.

Counsel for the respondent, State of Tennessee, submits that the foregoing propositions of law are questions raised by the record but denies they are of sufficient importance and magnitude to warrant the attention of this court, but if decided by this court the first should be resolved in the affirmative and the second should be resolved negatively. The reasons given by counsel for the petitioners and justification for this court's issuing the writ of certiorari will be refuted later in this reply in a discussion of the questions presented.

COUNTER-STATEMENT OF THE CASE.

The judge of the trial court, perceiving that the trial of James Earl Ray for the murder of the late Martin Luther King, Jr., was one of great interest nationwide, took early measures to control publicity regarding it so that a fair trial might be held by the issuance of a series of orders designed for that purpose.

The first order entered by the trial court, July 18, 1968, apparently shortly after the arrest of James Earl Ray and his return to Memphis to be held for trial (Tr. 6-9). A committee of eight (8) members of the Shelby County Bar was appointed to serve the court as amicus curiae to help or advise the court relative to the control of publicity in the case. This committee reported to the court prior to July 30, 1968, that there was probable cause to believe that the court's order of July 18 as amended July 23, 1968, had been violated but the court

held on that day (July 30, 1968): "in the interest of preserving the constitutional rights of all concerned and protecting the orderly preparation in progress of the trial, preserves further inquiry and disposition of each and all of the above instances until a later date", and then because the court desired to avoid any possible misunderstanding of its orders, supplemented its previous orders as follows:

> "All lawyers participating in this case, their assistants, associates, staff members, investigators and employees under their supervision and control, County Medical Examiner, Jury Commissioners, Criminal Court Clerk, County Sheriff, Police officials, and other law enforcement officers, employees of this Court, and all other persons employed in the Criminal Courts Building, their associates, deputies, assistants, staff members, and personnel under their supervision and control, are forbidden to take part in interviews or press conferences for publicity, and are enjoined from making extra-judicial statements about this case which involves:
>
> . . .
>
> 5. The credibility of or information concerning any known or intended witnesses or the treatment, acts and attitude of the defendant, and are further enjoined from making any and all other statements which may be prejudicial to a fair trial by an impartial jury in this case whether specified herein or not.
>
> All persons or entity subject to this order who feel aggrieved by anything herein contained are hereby admonished that any such grievances or complaints should be judicially presented.
>
> . . ."

(Tr. 13-15)

A copy of this order was receipted for to the Clerk of the Court by both petitioners for their respective newspapers. In addition to this, a copy of the order was mailed to each of the newspapers and it was published by them (Tr. 16-19 and 26-36). Further, petitioner Edmundson in his testimony, admitted reading the order (Tr. 200). The other petitioner, Hamilton, did not testify in the cause.

The article written by the petitioner Edmundson was found by the court to be in violation of the court's order and is found at pp. 23a-24a Appendix. For the convenience of the court it is quoted below:

"RAY SECURITY CALLED DANGER TO HIS 'SANITY.'

By Charles Edmundson.

The health of James Earl Ray, charged with slaying Dr. Martin Luther King, Jr., is so threatened by security measures in force at the Shelby County Jail that he may not be able to stand trial as scheduled Nov. 12, a private detective employed by Ray's attorney said last night.

Renfro T. Hays, 40-year-old investigator with offices in the Commerce Title Building, compared some of the conditions in Ray's cell with 'devices used by Communist police agents to destroy the health and balance of their victims.'

Hays spoke of bright lights kept shining night and day, of television cameras constantly monitoring the prisoner and of and (sic) uninterrupted lack of privacy.

Arthur Hanes, Ray's attorney, complained of the same items to Criminal Court Judge W. Preston Battle in a preliminary hearing Friday. Mr. Hanes was instructed to put his complaint in writing. The writ-

ten complaint is expected to be argued at another hearing Wednesday.

Mr. Hays said, his work in interviewing prospective witnesses has been easier since Judge Battle Friday repeated his caution that a court order restricting publicity is not to interfere with the right of witnesses to talk to attorneys for the prosecution or the defense.

Interviewed by telephone in Birmingham, Mr. Hanes said only he will have his motion asking security changes ready Wednesday. In court Friday Mr. Hanes charged the conditions 'constitute cruel and unusual punishment.'

Mr. Hays said he does not think the conditions criticized in Ray's cell result from intentional persecution.

'I don't for a moment think Sheriff Bill Morris is trying to drive this guy out of his mind. But it's the effect of this type of surveillance that counts.' ''

The article written by petitioner Hamilton found to be in violation of the court's order is found at pp. 25a-26a Appendix and the pertinent part of the article is as follows:

''In the earlier report, Hanes, Sr. was quoted as saying that Ray has undergone 'enough to bug anybody' during his confinement. He said Ray has had two guards 'breathing down his neck 24 hours a day' and sometimes has to cover his eyes against the bright lights 'shining on him night and day' in order to sleep.

Hanes charged that the security setup surrounding Ray constitutes 'cruel and inhuman treatment.' ''

As indicated above, the trial judge found both reporters to have violated the court's order to limit publicity about the case that would prejudice defendant's right to

a fair trial. He withheld punishment because he stated, "I am not yet ready to decide what final disposition should be made of the matter. It might well be that future action and conduct of all or some of these respondents might be considered as a mitigation or even as a purgation of the offense" (App. 13a). And further at page 15a of the Appendix the court said: "The Court being undecided at this time as to what action the court should take by way of punishment on account of said contempts, and being desirous of giving the matter further consideration, . . . and the same is hereby, reserved by this Court for further and future orders of this Court."

ARGUMENT.

Regulation of Press.

Because of the publication of the two newspaper articles in question, it would seem beyond doubt that it would be read by prospective jurors since the two papers carrying the articles are published daily in the area from which the jurors are required by law to be selected and it would appear to be clear to everyone that the reading of the articles would tend to influence any person who read them.

The article written by petitioner Edmundson at least suggests that the defendant in the criminal proceeding might be mentally incompetent to stand trial on November 12 because if the security measures enforced as to him at the Shelby County jail. It even compared some of the security measures with devices used by Communist police agencies to destroy the health and balance of their victims.

Such language certainly would be a big factor to consider relative to the admissibility of any confession or statement, if any, made by the defendant prior to trial. As a matter of fact it might be the sort of thing that would cause the defendant to make a statement as indicated by **Miranda v. Arizona**, 86 Tenn. 1602, 384 U. S. 436, 16 L. Ed. 2d 694. It would also tend to gain sympathy for the defendant and further it would also affect the weight to be given to defendant's testimony if he decided to testify during the criminal proceeding. The statement made by petitioner Hamilton is to the effect that the treatment undergone by Ray was sufficient to "bug anybody". This statement, it is insisted, would have the same harmful effect towards a fair trial as the statement by petitioner Edmundson.

Bridges v. California, 314 U. S. 252, 62 S. Ct. 190, 86 L. Ed. 192; **Pennekamp v. Florida**, 328 U. S. 331, 66 S. Ct.

1029, 90 L. Ed. 1295 and **Craig v. Harney,** 331 U. S. 367, 67 S. Ct. 1249, 91 L. Ed. 1546, relied upon by petitioners are not applicable in this case because in each of them the proceeding to be held was by the judge of the court without the aid of a jury and there resulted no threat to the administration of justice.

The question raised by counsel for the petitioners about the authority of a trial judge to enjoin members of the press for the publication of news and punishment for contempt to obey the injunction. One of the reasons given for granting the writ of certiorari is that this Court has never permitted the press to be criminally prosecuted for publishing an accurate account for newspaper information which had been voluntarily submitted to it. The obvious answer to that position is, of course, if such a question had been decided by this court and certainly would be no reason for granting the writ of certiorari because the question would have already been decided.

The trial judge's action in this respect is bottomed upon statements made by this court in **Sheppard v. Maxwell,** 384 U. S. 333, 357-358, 86 S. Ct. 1507-1519, 16 L. Ed. 2d 600. In that case it was said:

> "'The court's fundamental error is compounded by the holding that it lacked power to control the publicity about the trial. From the very inception of the proceedings the judge announced that neither he nor anyone else could restrict prejudicial news accounts. And he reiterated this view on numerous occasions. Since he viewed the news media as his target, the judge never considered other means that are often utilized to reduce the appearance of prejudicial material and to protect the jury from outside influence. We conclude that these procedures would have been sufficient to guarantee Sheppard a fair trial and so do not consider what sanctions might be available against a recalcitrant press nor the

charges of bias now made against the state trial judge."

Of course, that excerpt related to the authority of the trial judge to protect the jury from outside influence after the trial began. Previously in the opinion it was said that it could not be determined defendant Sheppard was denied due process by the trial judge's refusal to take precautions against the influence of pre-trial publicity alone. But these holdings do not suggest that the trial court does not have authority to regulate and control pre-trial publicity which would influence the outcome of the trial. It is made clear in the case that jury verdicts should be induced only by evidence and argument in open court and not by any outside influence whether a private talk or public print. By quoting from Mr. Justice Holmes in **Patterson v. State of Colorado ex rel., Attorney General**, 205 U. S. 454, 462, 27 S. Ct. 556, 558, to say the least the case stands for the proposition that trial judges have authority to pre-censor publicity relative to a pending trial whether the publicity be during a trial or prior to trial.

Another excerpt from the **Sheppard** case perhaps written in stronger language than the one cited above at pp. 361-364, Vol. 384, U. S. Reports, and pp. 1521-1522, Vol. 86, Supreme Court Reports, is as follows:

"More specifically, the trial court might well have proscribed extrajudicial statements by any lawyer, party, witness, or court official which divulged prejudicial matters, such as the refusal of Sheppard to submit to interrogation or take any lie detector tests; any statement made by Sheppard to officials; the identity of prospective witnesses or their probable testimony; any belief in guilt or innocence; or like statements concerning the merits of the case. See State v. Van Duyne, 43 N. J. 369, 389, 204 A. 2d 841, 852 (1964), in which the court interpreted Canon

20 of the American Bar Association's Canons of Professional Ethics to prohibit such statements."

Finally, this court in the **Sheppard** case said:

> "The courts must take such steps by rule and regulation that will protect their processes from prejudicial outside interferences. Neither prosecutors, counsel for defense, the accused, witnesses, court staff nor enforcement officers coming under the jurisdiction of the court should be permitted to frustrate its function. Collaboration between counsel and the press as to information affecting the fairness of a criminal trial is not only subject to regulation, but is highly censurable and worthy of disciplinary measures."
>
> U. S. Rpt. 363, S. Ct. Rpt. 1522.

Another facet of the first question is that the petitioners could not be guilty of violating the court's order or injunction because they were not parties to it although it is not denied that they did not know of it and the record clearly supports the finding of the trial judge that they did, in fact, know of the court's orders. Cases relied upon by petitioners for this proposition are **Regal Knitwear Company v. N. L. R. B.**, 324 U. S. 9, 65 S. Ct. 478, 89 L. Ed. 661, and **Lanzetta v. New Jersey**, 306 U. S. 451, 59 S. Ct. 618, 83 L. Ed. 888. Counsel for the respondent, State of Tennessee, submits that the latter of these cases does not deal with the question under consideration and that the first of these two cases (Regal Knitwear Co. v. N. L. R. B.) strongly supports the position of the respondent as well as the **Sheppard** case as indicated by the last excerpt quoted from that case. In the **Regal Knitwear Co.** case it was said:

> "The Federal Rules of Civil Procedure provide that: 'Every order granting an injunction and every restraining order * * * is binding only upon the parties to the action, their officers, agents, servants, em-

ployees, and attorneys, and upon those persons in active concert or participation with them who receive actual notice of the order by personal service or otherwise.' This is derived from the common law doctrine that a decree of injunction not only binds the parties defendant but also those identified with them in interest, in 'privity' with them, represented by them or subject to their control. In essence it is that defendants may not nullify a decree by carrying out prohibited acts through aiders and abettors, although they were not parties to the original proceeding."

324 U. S. 14-15, 65 S. Ct. 481.

A similar rule prevails in the State of Tennessee as indicated by **Nashville Corp. v. United States Steel Workers of America, et al.**, 187 Tenn. 444, 452-453.

Speedy Trial.

It is insisted that the failure of the trial judge to adjudge punishment in this cause amounts to a denial of a speedy trial to the petitioners as guaranteed by the Sixth Amendment, United States Constitution. **Klopfer v. State of North Carolina**, 386 U. S. 213, 87 S. Ct. 988, 18 L. Ed. 2d 1, is relied upon for this position. The present case is considerably different from the **Klopfer** case in that there has already been a judgment of conviction denouncing the conduct of the petitioners and the only thing left to be done is that of imposing punishment when the trial judge becomes satisfied regarding the amount of punishment that should be imposed. There has never been any disposition on the part of the trial judge not to complete his judgment in the case as soon as he decided what should be done. In the **Klopfer** case there had been no judicial determination that the defendant's conduct was in violation of the statute and no indication of the time when if ever a proceeding would begin to determine that question.

It is not unusual but the practice for most courts to take under advisement or consideration novel questions rather

than make a determination or hasty judgment from the bench which might or might not coincide with fairness and justice.

The judgment in this case was rendered September 30, 1968, and a motion for a new trial was denied by the trial judge October 22, 1968. An application for Appellate review apparently was constituted immediately for from the record it appears that the matter was before the Tennessee Supreme Court November 8, 1968, a period of only 17 days after it was finally disposed of by the trial court. Counsel for the respondent, State of Tennessee, insists that the trial judge was entitled to more time to crystallize his thinking on the question involved.

At 3 A. L. R. 1004 and 97 A. L. R. 808, it is said generally that it seems to be well settled that it is the duty of the court on a conviction or plea of guilty to impose sentence within a reasonable time and an indefinite postponement of sentence deprives the court of jurisdiction over the prisoner and a subsequent sentencing is void. In **Van Swergingen v. Van Swergingen,** 122 A. 2d, New Jersey 584, it is said that deferring sentence by a trial judge after a conviction of contempt for a period of 21 days was not unreasonable under the rules of criminal practice in the state of New Jersey requiring that sentences imposed in criminal contempt convictions be done without delay.

Petitioners contend that their inability to have their rights determined in this instance by an Appellate court has a chilling effect upon their right to free speech. They predicate this contention upon the theory that until such a determination is made they do not know the extent of their rights. This may be true but courts exist primarily for the purpose of adjudicating or passing judgment upon the conduct of persons and not to inform them of their rights. Informing people of their rights is only a secondary objective to be derived from court decisions. Very

few courts have jurisdiction to render opinions merely for the sake of advising people of their rights in the abstract. In declaratory judgment suits there must be a live controversy.

Further, the purpose of the order of the court was not only to chill the efforts of the petitioners in the publication of matters or information which would tend to prevent defendant Ray in the criminal suit pending against him from obtaining a fair trial but the purpose of the order was to prohibit such conduct and if the trial judge was right as insisted by counsel for the respondent, State of Tennessee, the delay in imposing sentence or in the petitioners having their rights finally adjudicated would be of no consequence since they would not have the rights prohibited by the trial court's orders.

CONCLUSION.

In view of the foregoing, it is insisted that the trial court was correct in holding that the articles written by the petitioners constituted great and present danger to the holding of a fair trial insofar as defendant Ray was concerned and that the trial court's failure to make an immediate decision with respect to the punishment that should be meted out against the petitioners did not constitute denying them a speedy trial.

Respectfully submitted,

GEORGE F. McCANLESS,
Attorney General and Reporter,
State of Tennessee,

THOMAS E. FOX,
Deputy Attorney General,
State of Tennessee,
Attorneys for Respondent.

Certificate of Service.

I certify that a copy of the foregoing Reply to Petition for Writ of Certiorari for the State of Tennessee has been forwarded to the Honorable Armistead F. Clay, 2700 Sterick Building, Memphis, Tennessee, attorney for petitioners, this the 21 day of March, 1969.

Thomas E. Fox,
Deputy Attorney General.